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be instituted. *Woodworth v. Mills*, 61 Wis. 44. The courts have also failed to distinguish carefully the allegations of lack of probable cause and termination of the prosecution. The reason for this latter allegation is merely to obviate the possibility of two proceedings upon the same dispute pending at the same time. Bishop, Non-Contract Law, § 246. After termination of the proceedings has been shown, the task of proving a lack of probable cause still remains, and while this may be rendered more difficult by the manner of ending the prosecution, yet so long as there has not been a verdict of guilty, the fact that it has ended cannot be affected by the mode of closing it. When this distinction is kept in mind, there would seem to be no reason for insisting, as does the court in the principal case, that one cannot allege an end of the prosecution until some other court has passed on the question of probable cause. *Kennedy v. Holladay*, 25 Mo. App. 503.

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CONFLICTING EQUITIES IN A PROMISSORY NOTE.—The decision of the English Court of Appeal in *Nash v. De Freville*, [1900] 2 Q. B. 72, reversing the judgment of the late Lord Russell of Killowen, is distinctly unfortunate. The defendant gave to one Peed three demand notes, under the express agreement that they should not be negotiated. Subsequently the defendant gave to Peed, under a similar agreement, two other demand notes in substitution for the first three, which, however, he neglected to take back. Peed, breaking faith with the defendant, negotiated all five notes to the plaintiff, a purchaser for value, without notice. Later the defendant paid Peed all he owed him on the notes, but again supposing them to be in Peed's possession, he failed to demand their return. Just before absconding Peed fraudulently induced the plaintiff to give up the notes, which he then mailed to the defendant. The latter, on receiving them, regarding the transactions with Peed as closed, destroyed the notes. On discovering Peed's fraud, the plaintiff brought his action against the defendant to recover the value of the notes, amounting to £5300. The court decided in the plaintiff's favor on the ground that the defendant was not a *bona fide* holder, since he gave no present value for the return of the notes, and since having been paid they were then overdue. The defendant was therefore said to have no better title than Peed, whose transaction with the plaintiff the latter was entitled to avoid.

The grounds for the decision cannot but strike one as surprising. It would seem that the court made a distinct blunder in treating the matter as if the notes had been going forward, instead of backward; that is, in regarding the taking up of the notes by the maker as a further negotiation. That a note should be due or overdue at the time the maker takes it up is perfectly natural, and surely cannot be a warning to him that there is something wrong with it. And as for value, if that need be discussed, the English Bills of Exchange Act (sect. 27, 1, b) expressly provides that an antecedent debt or liability shall be valuable consideration. But the true ground on which the case should have been decided lies within the broad doctrine enunciated in *Price v. Neal*, 3 Burrow, 1354. See 4 HARVARD LAW REVIEW, 297. While the notes were in Peed's possession, before negotiation by him, the defendant had an equity against them, but on the transfer to the plaintiff, a *bona fide* purchaser for value,

this equity was cut off. It would, however, attach whenever the bills should come again free and clear into Peed's hands. But when Peed, by fraudulent means, secured their return, the plaintiff had an equity which prevented the prior equity of the defendant from attaching. Had the transactions ended here, the plaintiff must have prevailed, on the theory of *Eyre v. Burmester*, 10 H. L. Cas. 90. The return of the notes to the defendant, however, vested the legal title in him, and cut off the plaintiff's equity. Both parties having been equally innocent throughout, their equities were equal, and in that case the holder of the legal title must prevail. *London Co. v. London Bank*, 21 Q. B. D. 535; *Colonial Bank v. Hepworth*, 36 Ch. D. 36. In deciding the case as it did, the court seems to have overlooked these fundamental principles.

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LIABILITY FOR SLANDEROUS STATEMENTS INDUCED BY THE PLAINTIFF.—

The law regarding liability for slander when the publication is caused by the plaintiff, is somewhat confused, both because decisions are scant, and because facts differing very slightly call for the application of three different principles, two, at least, of which are not clearly defined. When at the request of the plaintiff, who wishes to discover the author of slanderous stories concerning himself, the defendant reports statements he has heard, since his doing so is clearly to the plaintiff's interest, the occasion is privileged. For a privileged occasion exists whenever there is a legal, moral, or social duty, or whenever it is to the interest of any party concerned that a statement be made. Again, when one induces another to publish a slander, solely that an action may be brought, there is no liability. This principle, although it has not often been clearly stated, rests on the plaintiff's consent — *volenti non fit injuria*. See 10 HARVARD LAW REVIEW, 181. Still a third principle ought to have been applied in a recent case, *Shinglemeyer v. Wright*, 82 N. W. Rep. 887 (Mich.). The case is poorly reported, but the facts seem to show that the plaintiff, while alone with the defendant, was accused by him of theft. Saying she would make him prove his statements before a policeman, the plaintiff procured one, and had the statement repeated in the presence of this third party. The court held that no liability existed, as the doctrine *volenti non fit injuria* applied. But the facts show no consent. The defendant, indignant at the accusation, and apparently wishing to prevent its future repetition, thought to end the matter by making the defendant either undertake to prove his statements at his peril, or desist from them altogether. She gave an opportunity for open accusation or retraction, but no consent. Moreover, since it was neither to her nor to the defendant's interests that the accusation be made, the occasion was not privileged. Clearly it seems that under these circumstances liability should attach.

In an English case, where the defendant repeated certain slanderous remarks at the plaintiff's request, they were held actionable. *Griffiths v. Lewis*, 7 Q. B. 361. That the previous statements in the principal case were unpublished would not differentiate the two cases, as in neither would the plaintiff, by asking the defendant if he was ready, at his peril, to repeat his statements to a third party, necessarily consent to their repetition. Nevertheless, the principal case is in accord with the few American decisions in point. *Heller v. Howard*, 11 Ill. App. 554.